

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

THE KROGER CO.,	:	Case No.: C-1-02-439
	:	
Plaintiff-Appellee/	:	Beckwith, J.
Cross-Appellant,	:	
	:	
v.	:	<b><u>THE KROGER CO'S NOTICE OF CROSS-</u></b>
	:	<b><u>APPEAL</u></b>
	:	
MALEASE FOODS CORP.,	:	
	:	
	:	
Defendant-Appellant/	:	
Cross-Appellee.	:	

The Kroger Co. gives notice of its cross-appeal to the United States Court of Appeals for the Sixth Circuit from this Court’s judgment on Amended Order of May 2, 2005 remitting the jury’s damage award to \$440,000. This cross-appeal is filed timely under F.R.A.P. 4(a)(3).

Respectfully submitted,

/s/ Scott D. Phillips  
\_\_\_\_\_  
Scott D. Phillips (0043654)  
Trial Attorney for Plaintiff  
FROST BROWN TODD LLC  
2200 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 651-6983

OF COUNSEL:

Douglas R. Dennis (0065706)  
FROST BROWN TODD LLP  
2200 PNC Center  
201 E. Fifth Street  
Cincinnati, OH 45202  
(513) 651-6727

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Motion and Memorandum in Support has been sent by ordinary United States mail, postage prepaid on this 3rd day of June, 2005 to:

R. Gary Winters, Esq.  
McCaslin, Imbus & McCaslin  
900 Provident Bank Building  
632 Vine Street  
Cincinnati, OH 45202-2442

Robert W. Cinque, Esq.  
Cinque & Cinque  
845 3<sup>rd</sup> Avenue, Suite 1400  
New York, NY 10022

/s/ Scott D. Phillips

CinLibrary 0046906.0505960 1512078v.1